Improvement of Judicial Community Bodies and National Authority Interaction Practice

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Abstract: The author analyses the main trends in interactions of judicial community bodies with President of Russian Federation, legislature and executive power in provisioning of judicial proceeding. The author defines significant problems of interaction of judicial community bodies and state authority in solving main problems of judicial authority and proposes the ways of solving them that may stimulate not only systematizing of these problems and sealing them in standard legal acts but also improvement of efficiency of judicial proceeding (including forming of judicial manpower and securing constitutional rights of judges).

Key words: Judicial community bodies • Interaction • Legislature • Executive power • President of Russian Federation • All-Russian Judge Convention • Judicial Council of Russian Federation

INTRODUCTION

Pressing character of problems related to improvement of the role and importance of judicial authority and the necessity to provide its independence of other state power bodies cause the interest to judicial community bodies (JCB) as the main institution that support such independence not only in Russia [1-3] but in the other countries [4-9].

Federal Judicial Community Bodies in Russian Federation law [10] sets the following tasks for JCB: aid in improvement of judicial system and judicial proceeding; protection of rights and legitimate interests of judges, participating in organizational, manpower provisioning and sourcing of judicial activity; strengthening of judicial power authority; supervising fulfillment of requirement of judicial ethics by judges. JCB is necessary to interact with President’s order. According to G.T. Ermoshin, this fact is “only one of a number of jural facts that make the ground interaction should be effective and it should pursue the main aim-securing the principle of independence of judicial power.

According to Chapter 12 of the Federal Judicial System of Russian Federation Constitution Law [11], all judges of Russian Federation have common status and differ only in authority and competence. The status is provided by a special procedure and President of Russian Federation participating in it.

President RF and judicial power interaction has also organization component. Two main direction of this interaction may be defined as follows: 1) President of RF and superior judicial authority bodies (Constitution Court...
of RF, Supreme Court of RF, Supreme Arbitration Tribunal of RF) that means direct contacts of President with management of superior judicial authority bodies both in the process of applicants for posts in these bodies selection and in everyday work; 2) President of RF and judicial community bodies that means interactions of President with the bodies of judicial community and in first place with Judicial Council of Russian Federation and Supreme Qualifying Committee of Judges (SQCJ) as well as other qualifying boards of judges (QBJ).

According to M.I. Kleandrov “the problem of appointment of judges of supreme courts of the country is the very problem where the most important principle of interaction of state power branches is realized: judicial power represented by SQCJ of RF and Supreme Court of RF and Supreme Arbitration Tribunal of RF; legislature represented by Soviet of the Federation and President of RF as a head of the state, Protector of the Constitution, rights and freedoms of a man and a citizen” [14].

Constitution authorities of President of RF are realized in judicial community bodies through the following procedures: issuing of recommendations for judge appointment; termination of judge authority; instituting criminal procedures against judge, etc. But there are no legally provided strict requirements and ground for rejection of judicial community bodies’ conclusions (recommendations). Legislation in force has no clear list of professional qualities of judge that may be considered by judicial community bodies in making decisions regarding carrier of this judge. Lack of legal regulation of judicial community bodies’ relations with President of RF leads to decrease of the level of protection of judge independence.

Judicial Council of Russian Federation interacts with President of RF more closely. It has the authority of the supreme body of judicial community in periods between All-Russian Judge Conventions. Considering different problems of judicial power Judicial Council frequently applies directly to President of RF for necessary aid. That lasts for than 16 years. For example, appeal on VIII All-Russian Judge Convention in substantive provisions of Resolution on Judicial System of RF State and Main Directions of Its Development dated December 12, 2012 contains request to The Head of the State about aid in legal settlement of problems relating to functioning of judicial system and judge status [15].

Judicial power interacts with judicial community bodies in not less extend than President and executive power. The main form of judicial community bodies’ interaction with state authority is judicial community bodies participating in law-taking process. Judicial community bodies may influence activity of state authority bodies through proposals and prepared bills on the problems of judicial system improvement. The right of Judicial Council of Russian Federation in participating in Federal Assembly of Russian Federation discussions on bills on federal budget is sealed in Federal Judicial Community Bodies Law No 30-FL dated March 14, 2002 [10].

Judicial community bodies participation in law-making process is not always efficient, it takes place occasionally mainly during law-preparing work of executive power bodies and it is initiated by representatives of judicial power. Procedure of Judicial Council of Russian Federation representatives participating in meetings of law-making and state building working groups and committees for discussion of courts activity and judge status has not yet been sealed in legislation. The order of Federal Council of the Federal Assembly of RF [16] has no relevant provisions. That fact was mentioned by the author in previous work [17].

At the same time the list of legislative initiative subjects is defined in Chapter 104 of the Constitution of Russian Federation [12]. According this norm judicial community bodies has neither legislative initiative right nor actual possibility to participate in law-making process. Supreme courts: Constitution Court of RF, Supreme Court of RF, Supreme Arbitration Tribunal of RF have this right limited by the problems of their competence.

Judicial Council Chairman V.D. Zorkin thinks that this provision “is fraught with the risk of excessively wide interpretation of idea of ‘competence’ of supreme courts which should not turn into law-makers to comply the principle of independence of powers” [18].

Realization of bills and other proposals on improvement of court organization and judicial proceeding prepared by QCJ through supreme judicial bodies decreases effectiveness of these initiatives. It is advisable to give QCJ the possibility to participate in the work of working groups discussing mentioned bills and to leave to supreme courts their direct authority-jurisdiction.

Besides the law-maker has provided the other forms of judicial community bodies cooperation with legislature, for example according to Chapter 11 of Federal Law 30-FL SQCJ members are appointed by Federation Council of Federal Assembly of Russian Federation and the order of appointment is defined by provisioning of Chapter 27.1 of the Order of Federation Council of Federal Assembly of Russian Federation [16].
But neither federal law not the order provide the common order and criteria of selection of these persons that cause problems in functioning of this judicial community bodies and violation of its independence in their core competence.

Normative base that regulates the problems of judicial community bodies interaction with state authorities is fragmentary, some provisioning are contained in federal laws and some in subordinate legislation.

This provisioning leads to legal ambiguity in the problems of improvement of juducation and judicial community bodies work. The author’s the following ways of improvement of interaction practice of judicial community bodies and state authorities:

- Provide in the Order of Federation Council of Federal Assembly of RF the procedure of representatives of Judicial Council participating in meetings of law-making and state building working groups and committees for discussion of courts activity and judge status;
- Regarding manpower decisions seal in legislature the forms of interaction of QBJ and President’s of RF administration (bodies) (set clear criteria and ground for rejection of a nominee to a judge by President of Russian Federation), seal the list of professional qualities of a judge and revise a list of subjects authorized to assign a qualification class to a judge;
- On the stage of preparation of the drafts of financial documents regulating provisioning of judicial power functioning (in part of paper work for reconciliation procedure, making orders to the Government of Russian Federation), seal on federal level the order of interaction between the Government of Russian Federation and Judicial Council of Russian Federation.

REFERENCES


